August 8, 2012

Attn: Federal Maritime Commission

Re: Proposal for Export Index

Dear Commission:

As you may know, our company is a licensed freight forwarding company in Portland, OR. We are not a NVOCC. Most of our clients are agriculture in nature and range from small to mid-size companies. Our clients' cargoes range from small shipments (by air and by sea), to containerized shipments (in 20', 40', 40' HC, in dry and reefer), and to large break-bulk cargoes. Our clients reside all over the United States, as well as overseas. The responses here are based on an inquiry from a group called AgTC (Agriculture Transportation Coalition) and are based on U.S. agricultural exports.

1. Is there anything that prevents private index developers and publishers from developing indices of the kind being sought by U.S. agricultural exporters?

   I would gather there is something stopping a private industry from creating such a thing and that would be two things. First, the contracts between the carrier and the shipper is said to be confidential. To allow a publication to have this kind of data seems would be a breach of contract. Secondly, there is a concern that if one exporter of commodity "A" released his data to the publication, that possibly exporter #2 of commodity "A" would not relinquish his details, making the playing field uneven. As well, there are no guarantees the data that is given to the private publication to be accurate and true, because it would be thought the private industry would not be privileged to view the actual contract.

2. Has your company used or considered using any existing freight rate index to adjust rates in its export service contracts or to hedge freight rate risk? If so, what is your company's view on the products it used or considered?

   No, our company has not and will not be considering a freight index unless our individual shippers choose to do business in this manner. The proposed Export Index can be just as risky as the current situation. We would want to stick with what we know works for our customers. Those that seem to be asking for the Export Index, don't seem to understand what it could potentially do to their own businesses.

3. Would it be appropriate to use service contract data filed confidentially with the Commission to develop indices of the kind being sought by U.S. agricultural exporters (assuming the data is aggregated so as to protect the identity of individual shippers and ocean carriers before being released to the public in the form of an average rate or index)?

   It would not be appropriate to allow confidential pricing to be used. First of all, most contracts have special inclusions, if you will, that are not quantitative in nature. (i.e. extra free time at destination, extra free time at origin, origin door versus origin container yard) These extras do add to the value of the contracted rate. Most likely the price will be different between contracts because each has different special inclusions. Even if it was okay to share CONFIDENTIAL information, I am concerned the accuracy of the true value will not be included and thus combining disjointed pricing values, creating a median rate for the export index that has no true meaning to the industry. Also, no one has stated how all the NRA (Negotiated Rate Agreements) rates will be brought in to feed these rate indexes. Given the FMC doesn't have NRA rates filed with the FMC, how will the FMC know how many contracts exist and at what rate levels exist in these contracts? The FMC won't, which will skew the price index even more. Secondly, will the contracts the NVOCC's, who reside in and outside the U.S., have with the ocean carries be included? We all know the rates NVOCC's have with the carriers are below market value so the NVOCC can mark up the rate to gain profit from the ultimate shipper. If these NVOCC/Ocean Carrier rates are included in the export index, the final values will be even more skewed, showing a lower value than the actual market value.

4. Should these indices be optimized for use in service contracts, for use in financial hedging instruments, or both?

   The indices should not be used, especially at this juncture. As stated above, there are many issues that will not allow the export index to be accurate. If the export index was created, there should be time set aside after the export index is introduced to receive public feedback as to whether the index is accurate or not. If it is found to be accurate, then maybe the hedging process could be considered. If not, the export index could be relinquished. If one creates a need for such an export index as a basis of indexing, it can never be done away with. Also, one would not be hedging on the rate as much as hedging against what the index might show. This process is only going to confuse the individual markets. The smarter, more experienced, shippers already know where their prices need to be and negotiate with the ocean carriers now. These kind of shippers are not going to use an index from the FMC or a private party. The only entities that will use this information are countries like China who are not regulated as we are in the U.S., who can advise their suppliers (our exporters) what the rate needs to be based on a published index, which may be lower than market value. These countries will then demand to control the freight from their side of the transaction, exclaiming, if the exporters can't meet the matrix rate, then they will buy it from the exporters' warehouse locations and do the shipping and rate negotiation with the ocean carries themselves. This will lead into more aggravation for the exporter, who now makes a small profit with selling the goods delivered and who also currently maintains control of the goods, which is a big asset to this country, if you ask U.S. Customs or Homeland Security. The only companies that will profit from hedging are the investment companies. Why add another layer of bureaucracy for these small-margin transactions, whereby the exporter will retain even less profit?

5. What kind of competitive issues would the public release of a broadly based or route and commodity specific rate index create for U.S. export shippers or ocean carriers?

   Please refer to the above response. It may seem like a helpful thing to small exporters, who don't do their homework when it comes to pricing, but it really is going to squeeze the exporters even tighter. Anyone who has worked in the international transportation world for a while knows this will only cause another bottleneck in the process, especially for markets where the buyer already wants to control the freight.

6. If developed using service contract data filed with the Commission, should a U.S. export rate index be route and commodity specific or should it be more broadly based? If the specific rate index would be more useful to your business, explain what type of commodity, specific route, publication frequency, or other index-related factors are most needed.

   Of course more people will say "yes" to having as much information as possible. To have more information usually is thought of as having more power. However, those people who are thinking through this whole process are going to be between two evils. One, if everyone one knows too much information, the one shipping the cargo has no advantage in the transaction. If no one knows, because the export index doesn't give enough information, then no one will use it or rely on and keep the advantage with the U.S. exporter.

   (as an example) Even with Piers reports, you can find out how many loads of product "X" was shipped from port "A" to port "B". Even with this, one can tell what entity was shipping what and how much. This is already too much information to simply hand out for everyone, and by everyone, this means the foreign buyer, too.

   It is important to remember, not only with individuals in the U.S. have these details, but so will the overseas entities. How much is too much?

7. Should either or both parties to a service contract have the option of not having their contract rates incorporated into an index?
   No. It should be all or nothing. That being said, the export index numbers should include shipper, NVOCC, and NRA contract rates with the ocean carriers, if this program is going to be fair to everyone. Otherwise, the FMC would be helping out one part of the industry and not the other.

8. If made available by the Commission, how would an export rate index affect your company's export sales?
   It would put more demands on what the rates MUST be, or at least in the shipper's mind. The lazy exporters will look at the export index and assume they can obtain this rate in the real world of shipping. However, I don't see how this will be the case if the United States will continue to work as a capitalistic society without price fixing. As well, the rate is not everything an exporter needs in order to get his goods to market. Service, equipment, documentation, etc., are also necessary features needed to make each transaction take place.

9. If made available by the Commission, how likely is your company to use an export rate index in its service contracts to adjust rates?
   We would not be using the export index. Our customers may put it into their contracts directly, which we would be working with on their behalf.

10. Has your company or related subsidiary traded in freight derivatives? If so, describe that experience and the outcomes obtained?

Not this company, but the companies I represent have already figured out how to cover the differences in freight with their customers. Smart companies are already there. It does not make sense why the government feels a need to change a very capitalistic way of doing business to set-pricing.

11. If a U.S. export rate index is made available by the Commission, how likely is your company to trade in a derivatives market based on that index?

    Our company, not being an actual shipper or an NVOCC, would not unless our customer asked for us to do so on his/her behalf.

12. What impact would trading in a freight derivative market based on a U.S. export rate index have on the physical U.S. export container market?

    The impact as stated earlier would pull the control of the freight away from the exporter and to the overseas buyer. If the industry currently believes there is no control with the ocean carriers now, whereby the contracted rates are decided upon and signed to directly with the carrier, what benefit will the exporter have when the contracts will be between the buyer overseas and the ocean carriers, thus the exporter will no longer be the ocean carriers customer and will lose any clout once had.

Additional Comments:

Lastly, I think the FMC can find something more productive to do with tax-payer dollars than to waste it on the export-index project. Agriculture has always played on the government to protect them, but the export index is not going to benefit the export, only the overseas importer, while being financially supported by the United States tax dollar. As long as shippers and exporters are regulated by the FMC, the export index will only hinder the exporter more in his/her business opportunities. Shippers will always complain about rates; carriers will always complain about rates. In the end, the both entities are doing business in a capitalistic society.

Sincerely,

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